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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

P.M.

<b>Office Action Summary</b>	<b>Application No.</b> 09/815,134	<b>Applicant(s)</b> UCHIDA, YUKI	
	<b>Examiner</b> Andrew J. Fischer	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicant's amendment filed November 8, 2004 is acknowledged. Accordingly, claims 1-23 remain pending.
2. Claims 11-23 were withdrawn from further consideration pursuant to 37 C.F.R. §1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on April 21, 2004.
3. All references in this Office Action to the capitalized versions of "Applicant" refers specifically the Applicant of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" refers to examiner(s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

### ***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

5. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-10 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 1, it is unclear which phrase the newly added phrase “in communication between ... generating” is modifying. Applicant is reminded that “[a] claim must be read in accordance with the precepts of English grammar.” *In re Hyatt*, 708 F.2d 712, 714, 218 USPQ 195, 197 (Fed. Cir. 1983). What is “in communication between said-user side and said supplier-side . . . ?” The phrase appears to not have any grammatical nexus with the rest of the claim.

Additional evidence to support the Examiner’s conclusion that this phrase is indefinite includes the indefinite phrases (noted below) in claims 5 and 10. The Examiner however recognizes that this evidence is not conclusive. “While it is true that dependent claims can aid in interpreting the scope of claims from which they depend, they are only an aid to interpretation and are not conclusive. The dependent claim tail cannot wag the independent claim dog.” *North American Vaccine v. American Cyanamid Co.*, 7 F.3d 1571, 1577, 28 USPQ2d 1333, 1337 (Fed. Cir. 1993). However, Applicant is reminded that “there is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims. To the extent that the absence of such difference in meaning and scope would make a claim superfluous, the doctrine of claim differentiation states the presumption that the difference between claims is significant.” *Toro Co. v. White Consolidated Industries, Inc.*, 199 F.3d 1295, 53 USPQ2d 1065, 1070 (Fed. Cir. 1999). Because Applicant has used both “in communication between said-user side and said supplier-side” (*i.e.* claim 1) and “wherein said step of automatically identifying occurs at the user-side” (*i.e.* claim 5) to describe his claimed invention, the Examiner adopts the presumption that the difference is significant and the steps are different as well.

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b. In claims 1 and 6, the phrase “without reliance on user action” is indefinite. If the user did not act or create an action, the transaction can not take place.

c. Claims 5 and 10 are indefinite. Claims 5 and 10 state that the “automatically identifying” occurs on the “user-side.” However claims 1 and 6 make it clear that the identifying somehow occurs “between the user-side and the supplier-side . . . .” These positions are mutually exclusive making at least these claims indefinite.

7. The Examiner finds that because claims 1-10 are indefinite under 35 U.S.C. §112 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) (“Because the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

### ***Claim Rejections - 35 USC §102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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9. Claims 1-10 are rejected under 35 U.S.C. §102(b) as being anticipated by Beaston et. al. (U.S. 5,892,824)(“Beaston”). Beaston discloses automatically identifying, without reliance on user input, a selected aspect of information (price, tax, description); sending a print request to a printing apparatus (the receipt printer); printing the information; notifying a control apparatus of communication between the user-side and supplier side (verbally communicating with a check-out attendant or sales clerk).
10. Claims 1-10, as understood by the Examiner, are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Chen et. al. (U.S. 5,590,197 A)(“Chen”).
11. Claims 1-10, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Wong (U.S. 6,115,690 A).

***Claim Rejections - 35 USC §103***

12. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-10, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Beaston.<sup>1</sup> It is the Examiner's principle position that the claims are anticipated because of the inerencies noted above.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Beaston to include the electronic

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communications means. Such a modification would have made the transaction quicker and cheaper by utilizing an electronic device for record keeping purposes.

14. Claims 1-10, as understood by the Examiner, are also alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Wong. It is the Examiner's principle position that the claims are anticipated.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Wong to include the required information. Such a modification would have made the transaction cheaper by utilizing less people.

15. Additionally it is the Examiner factual determination that to one of ordinary skill in this art, it is old and well known that bar codes (*e.g.* UPC bar codes) may contain useful information including but not limited to: date of manufacture; shelf life; place of manufacture; intended distribution route; batch number; government specs; size, weight, color, etc.; safety, health, ingredients, precautions, dosages, etc.; information, pricing, discount, commission, tax, and other accounting information; automatic reordering instructions; serial numbers, and so forth. See *e.g.* Storch et. al. (U.S. 5,548,110).

16. It is also the Examiner's factual determination that bar code tags and radio frequency ("RF") tags are art recognized equivalents. See MPEP §2144.06. Both bar code tags and RF tags are used for the same purpose: conveying information about the article to which the tags are attached to a reader machine. Additionally, one of ordinary skill in the art recognizes that the selection of either a bar code tag over an RF tag (or vice versa, RF tag over a bar code tag) is not enough to distinguish the claimed invention over the prior art since both devices are recognized

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<sup>1</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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as interchangeable depending upon their intended use or the particular environment in which the tag will be used. See MPEP §2144.07. Evidence to support these conclusions includes but is not limited to *Rakers et. al.* (U.S. 6,763,996 B2); *Keys et. al.* (U.S. 6,758,403 B1); *Monico* (U.S. 6,557,758 B1); *McAllister* (U.S. 6,415,978 B1); *Helton et. al.* (U.S. 6,357,662 B1); *Maloney* (U.S. 6,232,876 B1); *Rupport et. al.* (U.S. 5,640,002); *Kewin* (U.S. 5,595,356); *Eberhardt* (U.S. 5,28,784); and *Scribner et. al.* (U.S. 4,688,026).

17. The Examiner takes Official Notice that it is very old and well known in the art that printers 'automatically identify a print request from a POS machine in both retail and electronic commerce.' For example, when purchasing an article at virtually any retail establishment, the purchaser receives a receipt without requesting a receipt. In those cases, the printer automatically identifies the POS terminal via its network interface without the purchaser's request to do so. This occurs without the user asking for the receipt. In mail order or electronic commerce situations, the receipt included with the order is provided without the user requesting a receipt. There may be a true receipt or packing slip. To be clear, the Examiner finds that packing slips are one form of a receipt.

18. The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,<sup>2</sup> the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only has Applicant not pointed to definitional statements in

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<sup>2</sup> See the Examiner's previous Office Action mailed July 14, 2004, Paragraph No. 16.



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his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements<sup>3</sup> with the required clarity, deliberateness, and precision.<sup>4</sup> Third, after receiving express notice in the previous Office Action of the Examiner's position that lexicography is not invoked,<sup>5</sup> Applicant has not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R.

§1.111(b) (*i.e.* Applicant has not argued lexicography is invoked). Finally and to be sure of Applicant's intent, the Examiner also notes that Applicant has declined the Examiner's express invitation<sup>6</sup> to be his own lexicographer.<sup>7</sup> Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and

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<sup>3</sup> "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

<sup>4</sup> "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

<sup>5</sup> See again the Examiner's previous Office Action, Paragraph No. 16.

<sup>6</sup> *Id.*

<sup>7</sup> The Examiner's requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner's requirements were simply an express request for clarification of how Applicant intend his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed January 2, 2005).

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accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).<sup>8</sup> The Examiner now relies heavily and extensively on this interpretation.<sup>9</sup> Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

19. Under the broadest reasonable interpretation standard noted above and unless modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner’s claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary)<sup>10</sup> during ex parte examination.

20. The Examiner confirms that claims 1-10 do not contain any product-by-process limitations.

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<sup>8</sup> See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

<sup>9</sup> See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]”

<sup>10</sup> See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) (“[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.”).

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***Response to Arguments***

21. Applicant's arguments filed November 8, 2004 have been fully considered but they are not persuasive.

22. As a starting point and in reference to electronic commerce systems, it is the Examiner's factual determination that web based electronic commerce systems are old and very well known in the art. Evidence to support this finding includes *e.g.* Wong and Chen. These disclosures exemplify basic features that are well within the knowledge of one of ordinary skill in this art.

23. It is the Examiner's position that virtually all receipts are printed with selected aspects of information (chosen by the seller). The buyer never says, "Hey seller, put the SKU number or UPC information on that receipt for me will you?"

24. Applicant's response has been considered but is not persuasive.

***Conclusion***

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. References considered pertinent to Applicant's disclosure are listed on form PTO-892.

27. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8<sup>th</sup> Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

29. Because this application is now final, Applicant is reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other

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aspects of patentability (e.g. §101 patentable subject matter, §112 1<sup>st</sup> paragraph written description and enablement, §112 2<sup>nd</sup> paragraph indefiniteness, and §102 and §103 prior art).

Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

30. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the Borland's Paradox for Windows User's Guide and Borland's ReportSmith for Windows User's Guide, are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The references are cited in their entirety. Paradox for Windows User's Guide and ReportSmith for Windows User's Guide, exemplify a typical relational database system and the tables, queries, and reports possible from such a system. Because of the references' basic content (which is self-evident upon examination of the references) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Paradox for Windows User's Guide and ReportSmith for Windows User's Guide are primarily directed towards those of low skill in this art. Because these two references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these two references.

31. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position

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regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicant for his "Remarks" (beginning on page 10) traversing the Examiner's positions on various points. If Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>11</sup> the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is again strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.

 1/2/05

Andrew J. Fischer  
Primary Examiner  
Art Unit 3627

AJF  
January 2, 2005

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<sup>11</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.